

Maine Law Review

Volume 60
Number 2 *Symposium -- Nation-Building: A
Legal Architecture?*

Article 15

June 2008

Volunteer Lawyers and Nation-Building: Using Experience to Serve the World Community

Jean C. Berman

Follow this and additional works at: <https://digitalcommons.mainerlaw.maine.edu/mlr>



Part of the [International Law Commons](#), [Law and Society Commons](#), and the [Nonprofit Organizations Law Commons](#)

Recommended Citation

Jean C. Berman, *Volunteer Lawyers and Nation-Building: Using Experience to Serve the World Community*, 60 Me. L. Rev. 533 (2008).

Available at: <https://digitalcommons.mainerlaw.maine.edu/mlr/vol60/iss2/15>

This Special Section is brought to you for free and open access by the Journals at University of Maine School of Law Digital Commons. It has been accepted for inclusion in Maine Law Review by an authorized editor of University of Maine School of Law Digital Commons. For more information, please contact mdecrow@maine.edu.

VOLUNTEER LAWYERS AND NATION-BUILDING: USING EXPERIENCE TO SERVE THE WORLD COMMUNITY

*Jean C. Berman**

It is with great pride that I note the participation of four International Senior Lawyers Project (ISLP) volunteers in this Symposium of the *Maine Law Review*. These highly accomplished lawyers, three of whom are from Maine and one from Canada, demonstrate perfectly the premises on which ISLP was founded: first, that the skills and experience of senior-level lawyers from the United States and elsewhere can be of great value to emerging democracies, social justice activists, and nations struggling to overcome poverty; and second, that there is a burgeoning pool of such lawyers, both retired and in active practice, who are eager to volunteer to help advance political, social, and economic justice in the neediest countries of the world.

ISLP was founded in the spring of 2000 by Tony Essaye and Bob Kapp, senior partners with the Washington offices of Clifford Chance U.S. LLP (then Rogers & Wells) and Hogan & Hartson, respectively. They gathered a Working Group of approximately twenty-five colleagues and raised funds to conduct a feasibility study. The study was undertaken by Barbara Swann, an attorney with significant overseas nation-building and rule of law experience as a consultant with U.S. Agency for International Development-funded projects. The feasibility study, which took more than seven months to complete and involved interviews with hundreds of lawyers, nongovernmental organizations (NGOs) and government officials in the United States, Eastern Europe, and South Africa, was completed in the late spring of 2001. The following fall, I was hired to be the Executive Director, and ISLP's active programming was launched. Linda McGill, whose article about working with the Human Rights Law Network in India is in this issue, became our first volunteer to undertake a long-term (5 month) on-site overseas assignment. Her success validated our concept and set the bar for all future assignments.

ISLP offers the services of experienced lawyers, on a volunteer basis, to promote democracy and the rule of law, human rights, and equitable economic development. We believe that all of these are critical components of nation-building. A successful nation has a legal architecture that protects human rights, encourages citizen participation, and promotes adherence by the government and citizens to the rule of law—that is a given. Some of our volunteers participate in the development of that architecture. We are, for example, assisting Liberia in the development of its health code and mining legislation and working with civil society in several countries to influence legislation affecting the environment, freedom of expression, and natural resource management.

But, as both Jim Dube and Linda McGill argue in this volume, the existence of a good legal architecture alone in no way guarantees its implementation. India, for example, has a very progressive constitution that provides rights ranging from the right

* Ms. Berman is the Executive Director of the International Senior Lawyers Project, a nonprofit organization based in New York City that provides pro bono legal assistance by senior-level lawyers on a worldwide basis.

to health and life to extensive rights to due process for criminal defendants. Yet these rights are routinely ignored, just as the Fourteenth Amendment was ignored for more than 100 years in many parts of the United States. Therefore, we believe that ISLP volunteers contribute to effective nation-building efforts by working with civil society and government agencies to *implement* existing rights and laws. Without such implementation, citizens become cynical and government remains, or becomes, authoritarian, ineffective, or both. The articles by Bill Coogan, Linda McGill, and Dick Spencer all highlight the ways in which our volunteers can use their skills and experience to build the capacity of civil society to hold government accountable, while Jim Dube's story shows how a bankruptcy litigator can work with a Solicitor General to strengthen government's capacity to enforce its own laws.

Additionally, nation-building must include building the economy of a country and expanding economic opportunities for all segments of the population. The work of ISLP volunteers that promotes economic development in poor countries or increases the capacity of a broad spectrum of the population to share in a country's wealth is, we believe, an important aspect of nation-building. This includes, for example, contract negotiation assistance provided to the government of Liberia, the review of mining agreements entered into by the Democratic Republic of Congo, intellectual property and contract assistance provided to Ethiopian coffee growers to trademark and sell their coffee to international buyers, and training in business law skills provided to black and other historically disadvantaged lawyers in South Africa.

The range of needs required for successful and sustainable nation-building thus creates opportunities for lawyers from all areas of practice. Public defenders, prosecutors, judges, corporate lawyers for large and small businesses and nonprofit organizations, litigators whose clients are corporations, labor unions, victims of discrimination or others, administrative law practitioners, and mediators all have skills and experience that can contribute significantly to the development of the rule of law, the capacity of civil society to participate in nation-building, the adoption of better laws, the ability of government to enforce its laws, and the expansion of economic opportunity in the poorest countries of the world.

To organize a broad scope of potential resources, ISLP developed four types of projects through which lawyers can participate in its work. These are:

1. On-site assignments with local nongovernmental organizations, government agencies and other institutions to provide mentoring and training for young staff, strategizing, assisting with discrete programs and projects, and otherwise building their capacity to achieve their goals;
2. Training programs for local lawyers and government officials;
3. Expert legal counsel for nongovernmental organizations and governments on corporate organization and governance, business transactions, litigation, legislative reform and other matters; and
4. Assistance with cross-border research and analysis on human rights and other issues.

ISLP volunteers have engaged in these four activities in Africa, Asia, Eastern Europe, Latin America, and Russia. Pro bono legal work for ISLP has been undertaken in or impacts more than thirty-five countries and includes, to cite some examples that indicate the range of possibilities (in addition to those described at greater length in this Symposium) seven months of assistance by a retired public

defender to open the first public defender offices in Ukraine; work with the Beijing University Women's Law Studies and Legal Aid Center on the development of guidelines for corporations to comply with the newly adopted Chinese law on sexual harassment in the workplace; strategizing and brief writing for Russian NGOs in cases against Russia before the European Court of Human Rights; four years of commercial law training programs in South Africa that have trained more than 250 black and other historically disadvantaged lawyers in the practical skills of representing small businesses; and two months of on-site assistance followed by off-site assistance to the Media Foundation of West Africa in connection with its efforts to protect journalists and expand freedom of the press in Africa.

As indicated previously, one region of special emphasis for ISLP is Liberia, where the contribution of ISLP volunteers to nation-building has been dramatic. Liberia, in addition to being the focus of Jim Dube's piece to follow, serves as a fitting example of the range of services provided through ISLP. Shortly after the election of President Ellen Johnson-Sirleaf, Africa's first female head of state and the first democratically-elected President of Liberia since the onset of the horrendous civil war led by Charles Taylor, ISLP stepped forward to assist the new administration. President Sirleaf asked ISLP for help in reviewing and renegotiating two major long-term concession agreements of critical importance in both rebuilding the Liberian economy *and* developing a legitimate and accountable government. As a result, ISLP volunteers spent hundreds of hours from early 2006 through early February 2008 assisting the new government's renegotiation of an iron ore concession agreement with Arcelor Mittal, the world's largest steel company, and a rubber concession agreement with Firestone Rubber, both of which had been entered into by the previous regime. These volunteers included Robert Hillman, the Fair Business Practices Distinguished Professor of Law at the University of California at Davis, three law firms (Cravath, Swaine & Moore, Hogan & Hartson and the Boston firm Sugarman, Rogers, Barshak & Cohen) and Joe Bell, a senior partner at Hogan & Hartson and member of ISLP's founding Board of Directors. In part due to the dedication and superior level of accomplishment of these outstanding volunteers, the Ministry of Justice enthusiastically welcomed ISLP's suggestion that we send an experienced litigator to work with it for six weeks in the spring of 2007. Jim Dube describes that experience in his article in this Symposium.

Following the renegotiation of the Arcelor Mittal agreement and Jim's first highly successful assignment (he returned for another six weeks this spring), several requests came to ISLP from Liberia. These included: assistance with the development of a model mining agreement; a review and probable renegotiation of the contracts between Liberia and the agent managing its shipping registries; assistance to the Ministry of Health in reforming Liberia's health code as part of the Ministry's efforts to rebuild the country's shattered healthcare infrastructure; and participation in a new Law Fellows program to mentor three young lawyers working in the Ministry of Justice. In addition to these projects for the government, ISLP has worked with civil society, in particular through the assistance of a Seattle labor lawyer, Doug Mooney, to a women's rights organization called Zorzor District Women Care (ZODWOCA). While Doug was not an expert on women's rights, he did have skills bringing different constituencies together around issues of common interest, and he used those skills to help ZODWOCA develop and implement a strategy for several organizations and entities to collaborate on awareness-raising and implementation of the new Liberian rape law,

particularly in rural areas surrounding Monrovia. Finally, in recognition of ISLP's belief that it is part of nation-building to bring former tyrants to justice, ISLP volunteers are leading the monitoring of the Charles Taylor trial in The Hague and the Alberto Fujimori trial in Peru.

While our projects provide opportunities for practitioners of widely varying backgrounds and skills, ISLP insists on one common denominator: all of our volunteers must be highly experienced or, in the case of law firm attorneys, under the close supervision of experienced lawyers. We believed at the founding of our organization, and are now convinced, that the skills, expertise and wisdom of senior lawyers are uniquely valuable for international work and nation-building. A historical perspective, experiences with change in one's own lifetime and with a range of possibilities for solving problems, an awareness that one good way is not necessarily the only good way—these are essential qualities that usually improve over a lifetime. And there is another factor that turns out to be significant: those receiving our assistance, particularly in many countries where seniority is more highly regarded than in our own, appreciate the respect for them and their work that providing people of such stature and high caliber demonstrates.

As reflected in the articles in this issue, lawyers from a broad range of backgrounds and experience, undertaking an equally broad range of projects, have much to offer to both citizens and governments striving to build just, stable, and democratic nations. A fair and equitable legal system is a prerequisite to achieving these goals. Equally so, however, are the enforcement of laws that guarantee such a system *and* a widespread belief that the system works well for all citizens. ISLP volunteers thus contribute to nation-building in important ways by assisting governments with law reform and law enforcement, as Jim Dube has, assisting NGOs in their efforts to secure and enforce rights, as Bill Coogan, Kim Matthews, Linda McGill, and Dick Spencer have, and working to expand economic opportunity and national wealth, as many other ISLP volunteers have. These are all long-term goals, and ISLP and its volunteers recognize how hard it is to “measure” the results of their work. Nonetheless, we know that our volunteers are making a difference, because our partners around the world have consistently attested to the remarkable contributions made to their efforts to build just, stable, and democratic societies.